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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,646	10/30/2001	Thomas S. Grason	7785-348_01267	2028

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AT&T Legal Department - AS

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Room 2A-207

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EXAMINER

STRANGE, AARON N

ART UNIT

PAPER NUMBER

2448

MAIL DATE

DELIVERY MODE

06/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/020,646	Applicant(s) GRASON ET AL.	
	Examiner AARON STRANGE	Art Unit 2448	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 3/23/09 have been fully considered but they are not persuasive.
2. With regard to claim 1, and Applicant's assertion that Doyle teaches a server processing the same type of content previously requested "only ... based on cost metrics" (Remarks 10), the Examiner agrees. However, Doyle further discloses that the cost metrics may be artificially adjusted to force selection of the MRS, if there is any MRS present (col. 7, ll. 9-12), since all servers that have not previously generated the requested content will have a high cost value, preventing their selection by the load balancing system.
3. With regard to Applicant's assertion that Doyle does not disclose "enabling the only one information module to receive the requests and all subsequent requests independent of an availability of the information modules for previous requests" (Remarks 12), this argument is moot in view of the new grounds of rejection, set forth below.
4. With regard to the rejection of claims 1-11 under 35 U.S.C. § 101, Applicant's amendments are not sufficient to overcome the rejection. The claims merely recite various "device[s] having" an interface or module. The specification describes each of

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these elements as a "mail server" (§23), a "lightweight component" that is "multithreaded" (§27) and "JAVA-based" (§34), respectively. Since the claimed "device[s]" have nothing other than the software components, the system is still directed to at least some software-only embodiments.

The Examiner recommends amending the claim to require storage of the interface and modules on a physical memory on the computing device.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 1-11 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

7. Claim 1 is directed to a system comprising a plurality of devices "having" a "device interface", a "module manager" and a plurality of modules. The specification describes each of these elements as a "mail server" (§23), a "lightweight component" that is "multithreaded" (§27) and "JAVA-based" (§34), respectively. Based on the cited portions of the specification, one of ordinary skill in the art would have understood claim 1 as being directed to at least some software-only embodiments. Since the claim is not limited to statutory subject matter, it is non-statutory.

Since the claimed "device[s]" have nothing other than the software components, the system is still directed to at least some software-only embodiments.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 1-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

10. With regard to claim 1, the limitation "the stateless module manager enabling the only one information module to receive the requests and all subsequent requests independent of an availability of the information modules for previous requests" is not described in the specification. The specification describes that "whichever module makes the first claim to a request owns it from then on" (¶29). A module must be "available" in order to claim a request. Therefore, the information module does not receive the requests independent of an availability of the information modules, since its ability to claim the request is very much dependent on its availability.

11. Independent claims 12 and 17 contain a substantially identical limitation, and are rejected under the same rationale.

12. All claims not individually rejected are rejected by virtue of their dependency from the above claims.

Claim Rejections - 35 USC § 103

13. While the prior art of record teaches the invention as disclosed in the specification, it fails to disclose the currently claimed feature “the stateless module manager enabling the only one information module to receive the requests and all subsequent requests independent of an availability of the information modules for previous requests”. Therefore, the rejection has been withdrawn. However, should Applicant choose to remove the newly added limitation, the rejections set forth in the Office action of 12/23/2008 should be addressed in any subsequent response.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON STRANGE whose telephone number is (571)272-3959. The examiner can normally be reached on M-F 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Strange/
Examiner, Art Unit 2448